Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) *and* Peter E. Dades. Case 8-CB-4237

February 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On August 4, 1981, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision and recommended Order.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

The Administrative Law Judge found that the Respondent violated Section 8(b)(2) and (1)(A) of the Act by causing the Employer, Schweizer Dipple, Inc.,[1] to terminate employees Peter E. Dades and Joseph Bevaque for failing to meet union obligations. Dades and Bevaque were discharged on May 27, 1980, after they stopped attending pipefitting training classes.[2] We are persuaded by the testimony of both the Respondent's and the Employer's representatives who attended the meeting when the discharge decisions were made that the Respondent's proposal that Dades and Bevaque be fired was the factor motivating this action by the Employer.

Andrew J. Martin, president of the Employer, testified that attendance at training sessions is not mandatory under the Employer's personnel policy. Martin agreed to fire the employees at a meeting at which he discussed with the Union the prospect of about 20 economic layoffs. Besides Martin, Employer General Superintendent Edward McFaul, Employer Assistant Resident Manager William O'Brien, and Union Business Agent Carl Gauntner were in attendance. Martin did not recall who first suggested Bevaque and Dades as candidates for discharge but quoted Gauntner as saying: "Let's fire them and get it over with. Set an example to the other people. Either do it or get out."

Describing the same meeting, Gauntner provided even more persuasive evidence that the Union was the motivating force behind the discharges. According to Gauntner, when the issue of cutbacks in the labor force was raised he pointed out to the Employer's representatives that "there were individuals that weren't living up to the [training] program" and that those individuals should be terminated.

Martin complied with Gauntner's wishes and set a termination date of May 27, 1980. To be sure, the training requirements for journeyman pipefitters are designed, at least in part, to assure employers of the technical proficiency of the craftsmen they hire. However, nothing in the record suggests either that the Employer's evaluation of Dades' or Bevaque's performance contributed to its decision to fire them or that the Employer considered participation in the training program essential to their employment.[3] To the contrary, Martin stated that his grounds for terminating the employees was their "failure to comply with their Union obligations," and Martin was unable even to specify with reasonable detail what those obligations were.

Based on the foregoing, we find that the Respondent was responsible for the adverse action taken against Dades and Bevaque. Accordingly, we conclude that, by causing their discharges, for union-related reasons, the Respondent violated Section 8(b)(2) and (1)(A) of the Act.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Pipefitters Union Local No. 120, Cleveland, Ohio, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Schweizer Dipple, Inc., is a member of the Mechanical Contractors Association (MCA) of Cleveland, Ohio, a multiemployer bargaining group representing about 100 contractors in the mechanical piping industry. MCA is a signatory to the collective-bargaining agreement negotiated with the Respondent.

[2] The training was part of a program proposed by the Respondent to resolve shortages of qualified pipefitters. The proposal was made at a January 21, 1978, meeting of a Joint Conference Committee to which the Respondent and MCA belong. It was subsequently approved by the membership of the Committee.

[3] See *Reinforcing Iron Workers, Local Union 426, International Association of Bridge, Structural and Ornamental Iron Workers*, 238 NLRB 4 (1978); *Honolulu Star-Bulletin, Ltd.*, 123 NLRB 395 (1959), enfd. 274 F.2d 576 (D.C. Cir. 1959).

[4] We also agree with the Administrative Law Judge that the Respondent violated Sec. 8(b)(1)(A) by charging Dades and Bevaque dues and fees at times, including their probationary periods, during which they were not members of the Union.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice and to carry out its terms.

WE WILL NOT restrain or coerce our employees in the exercise of their protected rights by:

(a) Discriminatorily recommending and causing Schweizer Dipple, Inc., to discharge prospective member-employees because they failed to comply with our training membership requirements.

(b) Coercively charging, collecting, and receiving dues and/or fees from prospective member-trainee employees who are not members of our Union.

WE WILL NOT in any like or related manner restrain or coerce prospective member-employees in the exercise and enjoyment of rights guaranteed them by Section 7 of the National Labor Relations Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL notify Schweizer Dipple, Inc., that we have no objection to the reemployment of Peter E. Dades and Joseph Bevazue.

WE WILL make Peter E. Dades and Joseph Bevaque whole, with interest, for any loss of wages and benefits they may have suffered by reason of our discrimination against them, as well as for dues and fees we charged and collected from them during their employment with Schweizer, Dipple, Inc., and while they were not members of our Union.

PIPEFITTERS UNION LOCAL NO. 120

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSEN, Administrative Law Judge: Upon a charge and an amended charge filed on June 25, 1980, and August 27, 1980, respectively, by Peter E. Dades, an individual, herein called Dades or the Charging Party, against Pipefitters Union Local No. 120, herein called Respondent, a complaint was issued by the Regional Director for Region 8 on behalf of the General Counsel on August 28, 1980. In substance, the complaint alleges that Respondent Union discriminatorily attempted to cause and caused the Employer to discharge employees for reasons other than their failure to tender periodic dues and the initiation fees uniformly required, as a condition of acquiring or retaining membership in Respondent; that such conduct by Respondent restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and therefore, is in violation of Section 8(b)(1)(A) and (2) of the Act; and that by collecting and receiving dues and administrative fees from prospective-member trainee-employees while they were not members of Respondent Union, Respondent thereby violated Section 8(b)(1)(A) of the Act.

On October 8, 1980, the Acting Regional Director for Region 8, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, issued an order consolidating herewith Case 8-CB-4237-2, in response to a charge filed against Respondent by Craig Rogers, an individual. In substance, the complaint alleges, *inter alia*, that Respondent unlawfully and discriminatorily collected dues and fees and/or excessive fees from Peter Dades, Joseph Bevaque, and Craig Rogers; and that Respondent made such collections although said employees were not members of Respondent and were denied membership in Respondent's organization.

Subsequently, on April 20, 1981, the Regional Director for Region 8, pursuant to Section 10(b) of the Act and Section 102.17 of the Board's Rules and Regulations, Series 8, as amended, issued an order severing Case 8-CB-4237-2 from the original Case 8-CB-4237, and deleting from the amended consolidated complaint the allegations made on behalf of Craig Rogers, Peter Dades, and Joseph Bevaque. Consequently, the only issues presented for determination herein are those with respect to allegations set forth in the initial complaint in Case 8-CB-4237.

Respondent timely filed an answer and an amended answer denying, respectively, that it has engaged in any unfair labor practices as set forth in the amended complaint, and modified by the severance.

A hearing in the above matter was held before me in Cleveland, Ohio, on April 27 and 28, 1981. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, the Employer, Schweizer Dipple, Inc., an Ohio corporation with an office and place of business in Cleveland, Ohio, has been engaged as a contractor in the mechanical construction industry.

In the course and conduct of its business operations, Employer annually derives gross revenues in excess of $1 million and purchases and receives at its Cleveland, Ohio, facility products, goods, and materials valued in

excess of $50,000 directly from points outside the State of Ohio.

The complaint alleges, the parties stipulated, and I find that Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the amended answer admits, and I find that Pipefitters Union Local No. 120, herein called the Union or Respondent, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Information*

Schweizer Dipple, Inc., Employer herein, is now, and has been at all times material herein, an ohio corporation with a place of business in Cleveland, Ohio, where it is engaged in the mechanical construction industry. Since 1976, Employer has had a contract to provide, and has been engaged in providing labor to install, piping and mechanical equipment in the nuclear power plant under construction at Perry, Ohio. In carrying out its mechanical operations, Employer employs approximately 600 to 700 members of Pipefiters Union Local No. 120, Respondent herein. Employer is a party to a collective-bargaining agreement with Respondent, Local 120, which expires about August 31, 1982, but the agreement does not contain any provision for a probationary period for employees or members, or for employees who have been referred to Employer by Respondent.

Respondent, Local 120, is made up of a membership of journeymen pipefitters and it is a member of Mechanical Contractors Association of Cleveland, Ohio, which is composed of memberships of 80 to over 100 other contractors engaged in mechanical piping, or insulation of heating systems, or power or piping systems, and it is signatory to the collective-bargaining agreement with Respondent. The Association negotiates labor agreements on behalf of its members and, jointly with Respondent, administers apprenticeship training programs. Sometime in 1978, the United Association and the National Contractors Association recognized a need for welders for nuclear plant construction and initiated a program to improve the skills of United Association of Journeymen, and to bring welders into the pipefitting industry and provide them with advance welding and pipefitting training, which would enable them to become journeymen mechanics who can perform other work when there is no welding to be done, and to provide them with the skills which are required for the complicated procedures mandated by the Nuclear Regulatory Commission.

Since Respondent had a training program with facilities, the United Association agreed to help them set up such training with funds from the National Industry Training fund. The training course would be open to any certified pipe welders who would be taught the skills of heliarc welding, as distinguished from mild pipe welding. Membership in Respondent was made conditional upon completion of the training program, while serving as a welder for 6 months with journeyman's pay.

Joseph Bevaque passed the welding training test as a certified welder, signed Respondent's agreement to attend the training sessions, and was referred by Respondent to Employer, which in turn employed Bevaque in January 1979 for at least 4 years at journeyman's pay and benefits. Similarly, Peter Dades passed the welding-training admission test and was a certified welder. He thereafter signed Respondent's agreement to attend the training sessions and was referred by Respondent to Employer, which employed Dades in December 1978 for a period of at least 4 years at journeyman's pay and benefits.

Dades attended all the training classes during the 6-month probationary period and Bevaque attended the great majority of training classes during his probationary period. However, Bevaque attended all except 7 of the 14 or 15 classes after the first session ended in June 1980. Dades missed 12 or 13 classes during the sessions which commenced in October 1979. Both Dades and Bevaque were notified by letter from Respondent about their failure to attend training sessions but their nonattendance was not abated. On or about May 27, 1980, Respondent's business agent met with member-training instructors in the training center and representatives of Employer, and recommended the discharge of all persons in the training program (including Dades and Bevaque) who were failing to attend training sessions. Said employees, including Dades and Bevaque, were discharged on May 27, 1980, for failing to attend training sessions pursuant to their signed agreement. Therafter, Dades filed a charge with the Board which resulted in the instant proceeding.

The record shows without dispute that, at all times material herein, the following-named persons occupied the positions set forth opposite their respective names, and are now, and have been at all times material herein, agents of Respondent within the meaning of Section 2(13) of the Act: Jack Safko, instructor in training; Carl Gauntner, business agent; Neil Walsh, coordinator of training; and Chet Barritterri, instructor in training.[1]

B. *Respondent's Training Program and the Agreement It Entered With Participating Employees*

The record herein shows that in a letter from the United Association dated September 18, 1979, Respondent received final approval of its training program and authority to commence processing candidates therefor.

The record further shows that Peter Dades commenced training on November 2, 1978, was tested but was rejected on November 2, 1978, completed training on November 24, 1978, and was tested successfully for employment at the Perry Power Plant on November 28, 1978. Similarly, Joseph Bevaque commenced initial training on January 23, 1979, and completed training on January 24, 1979. He tested successfully on January 24, 1979. Dades and Bevaque agreed and signed the following instrument (G.C. Exh. 8) on November 27, 1978, and Janu-

[1] The facts set forth above are uncontroverted and are not in conflict in the record.

ary 26, 1979, respectively, and were employed at the Perry Power Plant upon the conditions contained therein as follows:

> That in consideration of the opportunity to become a journeyman member of the United Association through its welding training facility, I agree that I will work on the job to which I am assigned by the Local Union until such time as I become unemployed by normal lay-off. I understand that I will be working on probationary status for the first six months period, and that upon successful completion of this period, and approval by the union, I will become a member of Local Union #120, I further understand all the obligations of union membership and that I will be required to attend such night instructional sessions as established by the Union. I execute this waiver willingly and without reservation.

Subsequently, both welders were given white tickets (G.C. Exh. 3) enabling them to work at the Perry Plant without being members of Respondent.

In a letter from Training Coordinator Neil T. Walsh dated March 16, 1979, all welders, including Dades and Bevaque, in the training program were notified that, pursuant to the agreement which they signed, training would commence on Saturday, March 24, 1979. Classes were held from 8 a.m. until 2:30 p.m. at the Pipefitters training center. Each trainee was asked to report to classes with a pair of work gloves, 6-foot ruler, pliers, pencil, and a notebook. The training continued through June 1, 1979; Dades attended all classes in that training session, and Bevaque attended essentially all classes during that session. Thereafter training classes were held every other Saturday beginning in October 1979 through June 1980. Bevaque attended all except 7 of the 14 or 15 classes in the spring of the last training session. Dades skipped about 12 or 13 classes during the last training session but both Bevaque and Dades completed the first 6 months of their probationary period. Thereafter, they became disgruntled about not having received membership in Respondent and did not attend classes during the second training session. In fact, the record shows that several trainees were dissatisfied with the fact that they had not received membership in Respondent and, during the spring of the 1980 training session, a petition of protest of dissatisfaction was circulated among the trainees regarding Respondent's failure to grant them membership pursuant to the agreement they signed.

When the business agent for Local 120, Carl Gauntner, learned about trainee dissatisfaction and the petition, he set up a meeting in May 1979 with the trainees and all of the business representatives, Mickey Donahue, Joseph Dingow, James Walsh, William Barnes, and himself, along with the financial secretary, Larry Smith. At that meeting, the business representatives explained to the trainees that they were experiencing difficulty with the various locals in processing their memberships with the United Association in Washington, but that the delay would be overcome and they would receive their memberships. They explained that the processing of applications for cards and membership books through Washington, D.C., takes about 3 or more months. At the hearing Gauntner testified that the papers for membership books were sent to Washington by the financial secretary in the latter part of 1980. Subsequent to the meeting and the explanation given by the business representatives, Dades and Bevaque nevertheless did not resume attending the training sessions.

Gauntner continued to testify as follows:

> We also stated that there were some local unions that could possibly issue building trade cards when that got squared away, but our Local Union was not going to issue building trade cards. We were issuing cards as metal trades journeyman that started the three and a half year program.
>
> Q. Did you explain to people how the program would operate as administered by 120 and UANCA?
>
> A. Yes. We told them that they had their six month probationary period. We realized that some of them had passed their probationary period, and if they continued to attend three and a half years of the schooling, and committed to that job site for three and a half year period over that, that the mechanical contractors had agreed with this program.

According to the undisputed testimony of Business Agent Gauntner, and other testimony in the record, Bevaque and Dades were warned about their nonattendance at the training sessions but they nevertheless failed to attend the sessions.

Andrew J. Martin, president of Employer (Schweizer Dipple, Inc.), testified that the contract with Local 120 does not provide for any probationary period and that Employer does not require probationary welder-trainees to attend training classes. He further testified that both Bevaque and Dades were upgraded for heavy wall piping by representatives of Employer. Ordinarily, he stated that he does not hire or fire but, in this case, he fired Bevaque and Dades following a meeting with McFaul, Employer's assistant resident manager, William O'Brien, Business Agent Carl Gauntner, and himself. Someone suggested that they fire Bevaque and Dades. Business Agent Gauntner said that sounded like a good idea to him and he (Martin) agreed. Carl McFaul said, "Let's fire them and get it over with. Set an example to the other people in there. Either do it or get out." Gauntner acknowledged that the training program contract was not made a part of the collective-bargaining agreement between Local 120 and Mechanical Contractors Association. He further admitted that he did not consider a lesser disciplinary measure than discharge of the employees. Consequently, on May 27, 1980, upon the recommendation of Business Agent Carl Gauntner and other members of Respondent, Bevaque and Dades were discharged along with five other trainees by Employer, for failing to attend training sessions.

Analysis and Conclusions

As readily observed from a reading of the above essentially undisputed and credited evidence, the training

agreement signed by trainees Dades and Bevaque was an agreement between themselves and Respondent Union. Employer was not a party to the agreement even though trainees (Dades, Bevaque, and others) were employed by Employer at journeyman wages and with knowledge of the training agreement. It is clear from the evidence that Employer employed the trainees because it had a significant need for welders (which the trainees were) and it employed said nonunion-member welders upon their referral and consent of Respondent Union. The training agreement was not made a part of the existing collective-bargaining agreement between Respondent and Employer, even though said agreement contained a provision for its amendment.

Significantly, Employer's employment of the trainees was not based upon any probationary period or condition that said trainess attend training classes. In fact, said trainees were hired as welders and were performing their duties in this regard to the obvious satisfaction of Employer (Employer testified that trainees Bevaque and Dades were upgraded for heavy wall piping). Consequently, although Dades and Bevaque breached their agreement with Respondent Union by failing to attend training classes during the second training session, they did not fail to report to work and perform their duties for Employer, and the latter did not discharge them for such a failure. Hence, Dades and Bevaque did not breach any agreement it had with Employer. On the contrary, when both trainee-welders were warned by Respondent about their failure to attend training classes, neither made any effort to attend classes. Thereupon, Respondent (Business Agent Gauntner) was provoked by their breach of the agreement with Respondent in late May 1980, and called a meeting with Employer (President Martin, Assistant Resident Manager O'Brien, and Respondent's training instructor, Carl McFaul). During their meeting, Gauntner and McFaul recommended the discharge of Dades and Bevaque and other trainees who failed to attend the training sessions. Employer agreed with their recommendation and discharged Dades, Bevaque, and four and five other trainees for failing to attend training classes.

The record is therefore clear that Respondent recommended and caused Employer to discharge Dades and Bevaque and that, if Respondent had not recommended the discharges, there is no indication in the record that Respondent would have discharged them purusant to any policy of its own.

Since it is clear that Respondent brought about the discharge of Dades and Bevaque because they failed to comply with Respondent's training rules, the question is raised as to whether the discharges under such circumstances affected the employees' working tenure for a reason other than their failure to pay periodic dues and fees, as the Supreme Court said was prohibited, *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); or whether Respondent used the emoluments of the jobs of Dades and Bevaque to enforce their compliance with the training sessions agreement (required class attendance), as was further prohibited by the Supreme Court in *Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969), as violative of Section 8(b)(1)(A) and (2) of the Act.

It is clear from the evidence that both questions must be answered in the affirmative since the training program was clearly a program and instrumentality of Respondent, under its exclusive jurisdiction and control. Employer merely gave its blessings to the program because it was receiving the welders it needed and, in all probability, because it contemplated it would ultimately become beneficiary of faster pipefitting. Employer did not fund or administratively direct the program and it had nothing to do with the training aspect thereof. Consequently, Respondent's conduct in requesting the discharge of Dades and Bevaque was to enforce its training program rules, and not for the periodic payment of dues and fees. Since the discharges were not within the latter exception enunciated by the Supreme Court in *Allis-Chalmers* and *Scofield, supra*, Respondent's conduct in bringing about the discharges of Dades and Bevaque was in violation of Section 8(b)(1)(A) and (2) of the Act.

Although Respondent admitted that it did not consider imposing other disciplinary actions against Dades and Bevaque, it certainly could have imposed other sanctions against them consistent with its advocated understanding of the signed agreement with the welders. Assuming, *arguendo*, that Dades, Bevaque, and other welders were to receive metal trade cards as distinguished from building trade cards at the end of the 3-1/2 years' training sessions, instead of at the end of their 6-month probationary period, it could have advised the trainees that membership would be withheld until the completion of the extended training.

Additionally, since the clear language of the agreement between Respondent and the welders (Dades and Bevaque) states that the signer was to work on a probationary status for the first 6-month period and, upon completion of this period, and approval by the Union, the signer would become a member of Local Union 120, Respondent's contention that Dades and Bevaque would become eligible for membership only after attending training sessions of 3-1/2 years is unsupported by the record. Under these circumstances, I find *Reinforcing Iron Workers, Local Union 426, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 238 NLRB 4 (1978), and *Honolulu Star-Bulletin, Ltd.*, 123 NLRB 395 (1959), inapplicable to the facts herein.

The evidence is uncontroverted that Dades and Bevaque completed their probationary period and that they attended all training sessions during the probationary period. Nevertheless, they were not granted membership in Respondent and both were nevertheless charged regular working dues of one-half percent of their gross pay as well as a monthly administrative fee of $8 during the course of their employment, even though they were denied membership in the Union subsequent to completion of their probationary period. Such conduct by Respondent was clearly in violation of Section 8(b)(1)(A) of the Act by charging dues and fees of the trainees while excluding them from membership. See *N.L.R.B.* v. *General Motors Corporation*, 373 U.S. 734, 745, fn. 12 (1963). There, the Court noted that Congress never intended that employees who were excluded from membership

should be saddled with the obligation of paying dues and fees. Respondent collecting dues from said trainees while it denied them membership had a restraining, coercive, and discouraging effect upon their rights, to avail themselves of organizational rights guaranteed by Section 7 of the Act. Moreover, by causing Employer to discharge Dades and Bevaque for failure to meet union membership requirements other than the obligation to pay periodic dues and fees, Respondent violated Section 8(b)(1)(A) and (2) of the Act.

Dades and Bevaque were reinstated to their former positions as a part of a non-Board settlement of the charge in *Schweizer Dipple, Inc.*, Case 8-CA-13871.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in an unfair labor practice warranting a remedial order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Having been found that Respondent has interfered with, restrained, and coerced its members by recommending and causing Employer to discharge them because they failed to comply with a union rule not involving nonpayment of dues or fees but relating to conditions of their membership, in violation of Section 8(b)(1)(A) and (2) of the Act; and by collecting and receiving dues and administrative fees from said employees while they were not members and their membership was being withheld by Respondent, in violation of Section 8(b)(1)(A) of the Act, the recommended Order will provide that Respondent notify Employer that it has no objection to the reemployment of said employees, and that Respondent make said employees whole for wages and benefits lost during their period of unemployment, as well as for dues and fees charged and received from them during their employment, within the meaning and in accord with the Board's decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977),[2] except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from or in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

[2] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the basis of the above findings of fact and upon the entire record of this case, I make the following:

CONCLUSIONS OF LAW

1. Schweizer Dipple, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Pipefitters Union Local No. 120 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminatorily recommending and causing Employer to discharge nonunion member-employees because they failed to comply with Respondent's training rule with respect to membership requirements (not related to the periodic payment of dues and other fees), Respondent violated Section 8(b)(1)(A) and (2) of the Act.
4. By collecting and receiving dues and administrative fees from prospective trainee member-employees while they were not members of Respondent, Respondent violated Section 8(b)(1)(A) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[3]

The Respondent, Pipefitters Union Local No. 120, Cleveland, Ohio, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Discriminatorily and unlawfully recommending and causing Employer to discharge prospective trainee member-employees for failing to comply with Respondent's training membership requirements.

(b) Coercively and unlawfully collecting and receiving dues and fees from prospective trainee member-employees, while they are not members of Respondent Union.

(c) Discriminating against prospective trainee member-employees in any like or related manner.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Notify Employer that Respondent has no objection to the reemployment of dischargees Peter E. Dades and Joseph Bevaque or other employees similarly discharged.

(b) Make dischargees Peter E. Dades and Jospeh Bevaque whole for wages and benefits lost by reason of the discrimination against them, as well as for the dues and administrative fees charged and collected from them during the period of their unemployment with Employer, with interest in the manner described in the section in this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records for the payment and collection of dues and fees,

[3] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

membership records and reports, and all other records necessary to analyze the amount of backpay dues under the terms of this Order.

(d) Post at Respondent's office and/or meeting hall in Cleveland, Ohio, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."